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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NORRIS CLERK
EPA -- REGION 10

In the Matter of:)	
)	DOCKET NO. CWA-10-2011-0101
)	
Kimble Oil, Inc.)	
Challis, Idaho)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent)	
_____)	

1. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990. 33 U.S.C. § 1321(b)(6)(B)(i).

1.2. The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer.

1.3. In accordance with Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, EPA issues and Kimble Oil, Inc. (Respondent) agrees to issuance of the Final Order in Part 5 of this CAFO.

2. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order in Part 5 of this CAFO becomes effective.

2.2. A concise statement of the factual bases for the alleged violations and specific references to the Act's provisions and implementing regulations Respondent is alleged to have violated appears in Part 3 of this CAFO.

3. ALLEGATIONS

3.1. Section 311(b)(6)(B)(i) of Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 19 authorize EPA to assess a civil penalty not to exceed \$37,500 against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of Act, 33 U.S.C. § 1321(j).

3.2. The Oil Pollution Prevention regulations that implement Section 311(j) of the Act establish requirements for preventing the discharge of oil. 33 U.S.C. § 1321(j), 40 C.F.R. Part 112. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines.

3.3. "Harmful quantities" are defined in 40 C.F.R. § 110.3 to include oil discharges that cause either (1) a violation of applicable water quality standards; (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

3.4. "Navigable waters" are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 as "waters of the United States, including the territorial seas."

3.5. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational on or before August 16, 2002, and that due to its location could reasonably be

expected to discharge oil in harmful quantities to navigable waters of the United States and adjoining shorelines, shall have prepared and implemented a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. §§ 112.7 and 112.8.

3.6. Under 40 C.F.R. § 112.7, the SPCC Plan shall be prepared “in accordance with good engineering practices” and have the full approval of management with authority to commit the necessary resources to implement the plan.

3.7. Respondent is a corporation organized under the laws of the State of Idaho and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.8. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a retail oil distribution facility located on Highway 93 North in Challis, Idaho.

3.9. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

3.10. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

3.11. The Facility had, at the time of inspection, an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

3.12. The Facility is located approximately 50 feet from Garden Creek, which connects to Hannah Slough and then to the Salmon River, which are “navigable waters” within the meaning of 40 C.F.R. § 112.2.

3.13. Respondent, at the time of inspection, was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

3.14. The Facility began operating before August 16, 2002.

3.15. The Facility is a non-transportation facility that, due to its location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.16. On August 18, 2009, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act and the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.17. EPA alleges that Respondent:

3.17.1. Failed to have an SPCC Plan that meets the requirements of 40 C.F.R. §§ 112.3 and 112.7;

3.17.2. Failed to have a licensed professional engineer review and certify the SPCC Plan, as required by 40 C.F.R. § 112.3(d);

3.17.3. Failed to provide general secondary containment at the truck loading and unloading areas, as required by 40 C.F.R. § 112.7(c);

3.17.4. Failed to conduct inspections and tests and maintain records of those inspections and tests, as required by 40 C.F.R. §§ 112.7(e) and 112.8(c)(6);

3.17.5. Failed to provide adequate secondary containment for bulk storage, as required by 40 C.F.R. § 112.8(c)(2);

- 3.17.6. Failed to conduct and document the training of oil-handling personnel, as required by 40 C.F.R. § 112.7(f);
- 3.17.7. Failed to provide sized secondary containment and a system to prevent premature vehicle departure at the truck loading rack, as required by 40 C.F.R. § 112.7(h);
- 3.17.8. Failed to ensure that drainage from storage areas was properly restrained, as required by 40 C.F.R. § 112.8(b);
- 3.17.9. Failed to provide systems to prevent bulk oil storage container overfilling, as required by 40 C.F.R. § 112.8(c)(8);
- 3.17.10. Failed to promptly correct visible discharges of oil and to promptly remove any accumulations of oil around oil transfer pumps and around the truck unloading area, as required by 40 C.F.R. § 112.8(c)(10);
- 3.17.11. Failed to follow the requirements for transfer operations, pumping and facility process required by 40 C.F.R. § 112.8(d).

3.18. Respondent's failure to prepare and implement an adequate SPCC Plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8 violated 40 C.F.R. § 112.3.

4. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations in Part 3 of this CAFO.
- 4.2. Respondent neither admits nor denies the factual allegations in Part 3 of this CAFO.
- 4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is FIFTEEN THOUSAND DOLLARS (\$15,000) in three payments, as set forth

below. This penalty amount has been determined in consideration of the statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

4.4. Respondent agrees to pay the civil penalty set forth in Paragraph 4.3 as follows: \$5000 within thirty (30) days of the effective date of the Final Order in Part 5 of this CAFO, \$5100 on the one-year anniversary of the effective date of the Final Order, and \$5050 on the two-year anniversary of the effective date of the Final Order.

4.5. Payments under this CAFO must be made by cashier's check or certified check, payable to "Environmental Protection Agency" and bearing the notation "OSLTF-311."

Payment sent by the U.S. Postal Service must be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Payments sent by express mail via a non-U.S. Postal Service carrier must be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Respondent must note on each check the title and docket number of this action.

4.6. Respondent must serve photocopies of the checks described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Ms. Kimberly Ogle
Unit Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, Washington 98101

4.7. If Respondent fails to pay the penalty amounts assessed by this CAFO in full by the due dates set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may subject Respondent to a civil action to collect the assessed penalty under the Act, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order in Part 5 of this CAFO.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent must pay (in addition to any assessed penalty and interest), attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal

to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.8. The penalty set forth in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into this CAFO and to bind Respondent to its terms and conditions.

4.10. Except as described in Subparagraph 4.7.2, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations in Part 3 and waives any right to appeal the Final Order in Part 5 of this CAFO.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant EPA Region 10.

FOR RESPONDENT KIMBLE OIL, INC.



Gary Kimble
President
Kimble Oil, Inc.

Dated: 8-23-11

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10

Dated: 9/13/2011

5. FINAL ORDER

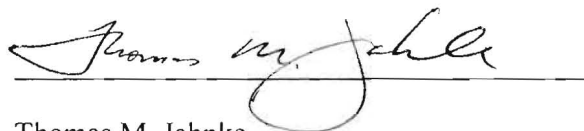
5.1. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in Part 3. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 311(b)(6)(B)(i) and (b)(6)(C)(i) of the Act, 33 U.S.C. §§ 1321(b)(6)(B)(i) and (b)(6)(C)(i), this CAFO assesses a Class I civil penalty and is not subject to a public notice and comment requirement.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 16th day of September, 2011.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Kimble Oil, Inc., DOCKET NO.: CWA-10-2011-0101** was filed with the Regional Hearing Clerk on September 16, 2011.

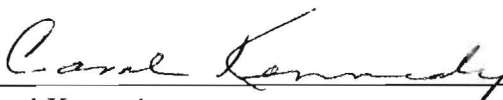
On September 16, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Kimberly Owens, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 16, 2011, to:

J. Michael Wheeler
2635 Channing Way
Idaho Falls, ID 83404
Attorney for Respondent

DATED this 16th day of September 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10